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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,905

04/14/2005

Aaldrik Engels

7392/84241

4422

42798 7590 02/12/2007
FITCH, EVEN, TABIN & FLANNERY
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WASHINGTON, DC 20036

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/522,905	Applicant(s) ENGELS ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status.

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-22 and 45-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22 and 45-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-7-06</u> . | 6) <input type="checkbox"/> Other: _____ |

The rejection of the claims under 35 USC 102 has been withdrawn for the reasons discussed by applicant. Applicants' reference to the international search report, wherein all of the claims are free of the prior art, is appreciated, but the claims stand rejected for the following reasons.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-22 and 45-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Budd (4,645,674).

A partial description of the subject matter in Budd was presented in the last office action. Budd further discloses topped savory snack foods. In example 2, corn collets were placed in a seasoner with oil, cheddar cheese powder and salt. The sugar and water with other ingredients are sprayed onto the product. Finally the coated product is dried in a vacuum oven. Although maltodextrin, mono and disaccharides are not specifically mentioned in this example, one of ordinary skill in the art would expect these ingredients to be in the binder composition because applicant has defined sugars to include these components at column 3, lines 35-45.

Fructose is known to be a monosaccharide and sucrose is known to be a disaccharide. Claim 17 appears to differ from Budd in the recitation of the particle size of the topping and in the recitation of the specific amounts of maltodextrin and saccharides that are in the binder composition at step b. Although the particle size is not mentioned, it would have been obvious to modify the granule size of the powdered cheese in Budd to improve the visual appeal of the snack food. Also at column 4, lines 45-57, various toppings are contemplated and these would have been expected to vary in size. It would have been obvious to adjust the percent of maltodextrin in the binder composition according to the extent of sweetness desired in the snack food. It is very well known in the art that sucrose and fructose have a sweeter taste than maltodextrin.

The snack foods contemplated in Budd at column 1, lines 40-53 appear to include all of the snack foods mentioned in the claims.

Maltodextrin is a well-known polysaccharide. Although the specific use of yeast as a flavor enhancer is not mentioned, it would have been obvious to use yeast in a snack food to give the food a fresh baked flavor. Since the starting materials in Budd are snack foods, it would have been obvious to

expect the dried snack to have been made by any of the variety of methods shown in claims 55 and 58.

The secondary references have been withdrawn from the rejection because examiner does not believe that they are necessary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center
(EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 1761
PRIMARY EXAMINER 2-207